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ROBERT GRAHAM
EXECUTIVE DIRECTOR

May 3, 2000

HAND CARRIED

REPLY TO:
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LYNNEL ROBERTSONHonorable Dickinson R. Debevoise
Martin Luther King, Jr. Federal Building
50 Walnut Street
Newark, NJ 07102Re: Newark Coalition for Low Income Housing v.
Housing Authority and Andrew Coumo, Civil Action 89-1303;
Funding for the new construction.

Dear Judge Debevoise:

We wish to bring to your attention the fact that the funds reserved by HUD in 1991 and 1992 for the construction of the replacement housing are insufficient to construct the units under current construction costs as permitted by the current HUD Total Development Costs (TDC). The cost of new construction has increased over the last eight years while the funding provided by HUD has remained constant for ten years ("irrespective of inflation of construction and other costs.") The Authority has completed 949 units within the funding constraints imposed by HUD. The limited funds available for construction has impacted negatively on the Authority's ability to develop the remaining 828 units.

We sent letters to HUD dated December 7, 2000, January 11, 2000 and March 15, 2000, requesting the additional funds necessary to cover the difference between the funds reserved for new construction and the estimated total development costs applicable to Projects NJ 2-47, NJ 2-49 and NJ 2-52. Copies of said letters are attached to the Certification of Joseph Bianco submitted herewith.

The Authority designated developers for NJ 2-47 and NJ 2-49 in 1998. These projects consist of 100 and 96 units respectively and are replacement units for Columbus Homes. At the time the developers prices were within the funding limitation available for these projects. Thereafter, each developer informed us that they could not perform the job for the price which they had proposed. We advised HUD of this problem and inquired whether we could modify the development price within the existing funding limits. We were told that it would be necessary to resolicit proposals on these projects because an increase in price would be unfair to other potential proposers. Thereafter, HUD issued new Total Development Cost Guidelines which exceed the fund reservations in these projects. See: Joseph Bianco's Certification.

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"Building Quality in Housing Through Partnership"

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The Authority designated the developer for NJ 2-52 in November, 1999. NJ 2-52 is to be constructed at the site of the former Columbus Homes. The price proposed by the highest rated developer was \$3,000,000 over the HUD limit with respect to development costs. We requested that HUD authorize the Authority's exceeding the total development cost limits and increase the funding for the project accordingly. In anticipation of the grant of additional funds the Authority and its developer have progressed with the preparation of construction documents.

We received a letter from HUD dated April 6, 2000 denying our request for additional funding for projects NJ 2-47, NJ 2-49 and NJ 2-52. A copy is attached to the Certification of Mr. Bianco. In that letter HUD indicates that no appropriations have been made by Congress for any new development and that HUD believes that it fully complied with the Settlement Agreement and Order by the funds which were committed in 1991 and 1992. Further, HUD directed us to utilize other capital funds to cover the short-fall between the fund reservation and the current total development costs. The capital funds to which HUD is referring are Comprehensive Grant Funds which have been earmarked for the modernization of units at existing Projects. The alternatives would be to reduce the number of units to be developed which would require an amendment of the Court Ordered Settlement or to significantly reduce the quality of the construction of the new apartment units. We are continuing with the development of NJ 2-52 with a temporary budget which includes funding in the amount of \$3,146,319.00 from other Housing Authority sources.

Neither of the above alternatives is appealing to the Authority. The suggestion of HUD that we use other capital funds will deprive the existing tenants of badly needed improvements to their projects. A reduction in the number of replacement units not only violates the spirit of this Court's order but deprives the low income residents of Newark of badly needed new housing. Therefore, we request that HUD be ordered to increase the fund reservation on all incomplete Projects mandated by the Settlement Order in this matter to a level consistent with the HUD Total Development Cost Guidelines. This would cover the following Projects: NJ 2-45, NJ 2-47, NJ 2-48, NJ 2-49, NJ 2-50, NJ 2-52 and NJ 2-53.

We believe that this Court has the authority and an obligation to enter such an order so as to facilitate the Authority's compliance with the Settlement Agreement and subsequent Court Orders. To require the Authority to develop housing without sufficient funding from HUD violates both the letter and spirit of the Court's Order. The increased costs are a result of inflation and HUD's recognition that its prior development cost limitations did not truly reflect the real cost of constructing substantial and durable housing for low income families.

In support of this application we rely upon *Little Earth of the United Tribes, Inc. vs. HUD*, 807 F.2d 1433 (8th Cir. 1986). In that case, the District Court issued an order requiring HUD to fund necessary repairs to a low income housing project. In affirming that order the Court stated at page 1442 the following:

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Similarly, we cannot accept HUD's contention that the district court directed HUD to commit funds beyond HUD's statutory authority under section 207 (k) of the National Housing Act. HUD argues that the National Housing Act does not obligate HUD to fund rehabilitation of Little Earth, and further more, HUD's decision not to fund rehabilitation of Little Earth is a rational exercise of its discretion, judicially unreviewable under section 701 of the Administrative Procedure Act... We agree with HUD that section 207 (k) is not a mandate; it authorizes but does not require HUD to take actions necessary to protect its mortgage interests. While HUD must perform its duties and exercise its powers consistent with the national housing policy, section 207 (k) gives HUD broad discretion to determine the methods by which it will protect its mortgage interests... If HUD voluntarily funded the rehabilitation mandated by the district court's November 8 order, such funding would fall within the scope of HUD's section 207 (k) discretionary authority. The national housing policy of eliminating "substandard and other inadequate housing" would be furthered. The distinction here, HUD argues, is that HUD did not volunteer to fund the rehabilitation, rather the Court ordered it. We think the distinction makes no difference. HUD's statutory authority is not restricted simply because its actions are court ordered rather than of its own volition. We thus conclude that the district court's November 8 order directs HUD to engage in activity within its statutory authority under section 207 (k).

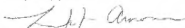
As in the *Little Earth* case, HUD here has voluntarily agreed to finance the development of new housing. In *Little Earth* HUD refused to provide additional funding to complete the necessary renovations. HUD's refusal to provide the additional funding for the replacement units for Columbus Homes is a violation of the Court's Order and of the obligation to provide the "one-for-one" replacement for Columbus Homes which was mandated by 42 U.S.C. 1437 (p) at the time that HUD approved the demolition application. At this time HUD cannot refuse to provide the additional financing necessary to complete the construction process. Another case which supports the Authority's position is *Project B.A.S.I.C. vs. Kemp*, 768 F. Supp. 21 (D.R.I. 1991) reversed on other grounds, 947 F.2d 11 (1st Cir. 1991). In that case, the Court held HUD in contempt for its failure to provide funding for the construction of Court mandated housing. The Circuit Court reversed on the basis that HUD was not afforded proper notice of the Court's intent to impose sanctions and remanded the matter for further proceedings. It did not find that the sanctions themselves were improper.

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Based on the foregoing, the Court is requested to enter an order requiring HUD to provide the necessary funding to complete all incomplete projects which are replacement units for Columbus Homes. The Notice of Motion, Proposed Order, and Certification of Joseph Bianco in support of this application are submitted herewith. If you have any questions, please contact me.

Very truly yours,



Frank L. Armour
General Counsel

cc: Gustav Heningsburg
Susan Barone, Esq.
Harris David, Esq.
JoAnn Fry, Esq.
Neil Gallagher, Esq.
Robert Graham

FA:

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